

OLC 74-0518

27 March 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Budget Impoundment and Control Act

STATINTL

1. [REDACTED] Comptroller, called regarding the subject legislation and I informed him that, failing to get a hold of either himself or [REDACTED] I had called Jim Oliver, OMB, because of the press of this matter to learn further about the legislation's impact and prospects. I reminded [REDACTED] that we had been uneasy about this legislation and although we had discussed it with appropriate offices within the Agency and staff members of our appropriations committees, we still thought that it had not received the attention it deserved; thus the memorandum of 7 December 1973 to interested offices by Jack Maury calling attention to some of the features of the bill that we thought could cause us some problems.

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2. [REDACTED] is reviewing the House and Senate passed bills to further assess their possible impact. I told him that [REDACTED] is now handling the matter for our office and he could be in contact with him if he needed any further information, but that we should be moving rather fast now if it is determined that something has to be done on the Hill. It is Mr. Cary's opinion that whatever [REDACTED] comes up with should be sent by the Office of the Comptroller directly to OMB.

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[REDACTED]
Deputy Legislative Counsel

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REVISED BUDGET REFORM BILL REPORTED TO SENATE

Action—Senate Rules and Administration Committee March 6 unanimously reported with amendments S 1541 reforming congressional budget procedures (S Rept 93-688).

Seeking consensus in an attempt by Congress to take control of federal economic and spending policies, the Rules and Administration Committee submitted to the Senate a compromise version of budget-reform legislation (S 1541).

To satisfy objections and criticisms raised both by individual senators and by legislative committees, the Rules Committee recommended substantial revisions in the original version of S 1541 reported by the Government Operations Committee on Nov. 28, 1973 (S Rept 93-579). The revised measure was likely to be the bill under consideration when the Senate took up budget reform late in the week ending March 16 or the following week.

In making its revisions, the Senate Rules Committee preserved the general outlines of budget control reforms proposed in 1973 by a special joint committee set up to analyze the inability of Congress to harness its appropriations decisions to over-all budget requirements. With some modifications, the joint committee's proposals had been followed by the Government Operations Committee in drawing up its version of S 1541 and by the House in passing a budget-reform measure (HR 7130) on Dec. 5, 1973. (*House action, 1973 Weekly Report p. 3174, 3092; joint committee proposals, p. 2448, 1013*)

The Rules Committee's revisions—produced by unprecedented negotiations among staff representatives of 10 Senate committees, four joint committees and the House Appropriations Committee—were “for the most part designed to add a new and comprehensive budgetary framework to the existing decision-making processes, with minimum disruption to established methods and procedures,” the Rules Committee said in its report.

To produce a bill which would be “(a) enactable, (b) workable and (c) useful,” the committee proposed changes in the Government Operations Committee's recommendations for establishing a budget-making timetable, setting annual budget targets, reconciling separate appropriations decisions to those targets and bringing backdoor spending programs under better annual control. Like the House bill, both Senate versions would give Congress more time to consider the budget by starting the fiscal year on Oct. 1 instead of July 1.

In summary, the Rules Committee's substitute revamped the first version of S 1541 by:

- Lengthening the budget-making timetable and keying deadlines for enactment of appropriations bills and reconciliation of spending decisions to the customary August congressional recess.
- Loosening the appropriations and outlay targets that Congress would set for itself by concurrent resolution before taking up separate appropriations requests.

Congressional Budget Timetable

As revised by the Senate Rules and Administration Committee, S 1541 established the following timetable for consideration of the budget by Congress:

	Original Bill	Substitute Bill
Current services budget submitted	Dec. 1	Nov. 10
President's budget submitted	Feb. 1	Feb. 15
Committee reports to budget committees	April 15	April 1
Office of Budget report submitted	May 1	April 15
Budget committees report first budget resolution	June 1	May 1
Authorization bills	May 31 (enacted)	May 15 (reported)
Budget resolution cleared	July 1	June 1
Appropriations bills cleared	Sept. 20	5 days before August recess (or Aug. 7)
Budget committees report second budget resolution	Not required	3 days before August recess (or Aug. 15)
Second budget resolution cleared	Not required	3 days after August recess (or 4 days after Labor Day)
Reconciliation bill cleared	Sept. 30	Sept. 25
Fiscal year begins	Oct. 1	Oct. 1

- Requiring Congress to take a second look at its budget targets before cutting appropriations to meet them.
- Keeping new entitlement programs committing the federal government to provide benefits to designated groups outside the regular appropriations process.

To provide a step-by-step transition as Congress started using the new budget-making procedures, the Rules Committee recommended that the bill's requirements be phased in gradually, taking full effect for the fiscal year starting on Oct. 1, 1976.

The committee also made other changes in provisions dealing with membership on a Senate Budget Committee that would report budget resolutions and with appointment of a director to head a Congressional Office of the Budget that would assist congressional budget decisions.

The committee dropped a provision limiting program authorizations to three years and weakened another that would have required pilot testing of proposals for new federal programs.

In Committee - 2

Budget-Making Process

Budget Committees

Like the House-passed bill, S 1541 would establish House and Senate budget committees to study and recommend changes in the President's budget policy. Both bills also would establish a staff organization—called the Legislative Budget Office under HR 7130 and the Congressional Office of the Budget under S 1541—to assist the budget committees and other members in budget analysis.

HR 7130 left to the Senate determination of the Senate budget committee's membership. Similarly leaving it to the House to determine the House budget committee make-up, S 1541 provided that senators be assigned to the budget committee by normal Senate procedures.

Making one minor change in the original Senate bill, the Rules Committee substitute would allow senators assigned to the budget committee to keep serving on two other major committees until January 1979.

Budget Submission

In moving to an Oct. 1-Sept. 30 fiscal year, S 1541 like the House-passed bill would establish a timetable to assure completion of congressional action on spending measures before the fiscal year began.

To give Congress a quicker start in considering the budget, S 1541 would require the executive branch by Nov. 10 of each year to send Congress a "current services budget" projecting what would be spent for existing federal programs at existing commitment levels during the upcoming fiscal year. In revising S 1541, the Rules Committee moved the deadline for submission of the current services budget to Nov. 10 from Dec. 1 to avoid interfering with preparation of the President's actual budget message.

S 1541 also delayed the deadline for release of the President's budget proposal to Feb. 15. The House-passed measure made no change in the existing practice of submitting the budget about Jan. 20. (*Senate timetable*, p. 675; *House timetable*, 1973 *Weekly Report* p. 3174)

Budget Resolution

After reviewing the President's budget proposals the House and Senate budget committees by May 1 would report a concurrent resolution setting forth a tentative alternative congressional budget.

By June 1, Congress would have to clear the initial budget resolution, which would set target totals for appropriations, outlays, revenues, budget deficit and the overall public debt. (Under the House bill, the resolution would have to be cleared by May 1.)

As reported by the Government Operations Committee, S 1541 would have required that the target total "limitations" be broken down among committees and subcommittees handling spending measures to provide a scale against which to judge actions on separate spending measures.

As revised by the Rules Committee, however, S 1541 like the House bill would require that the "appropriate level" target totals be broken down among 14 functional categories used to classify federal programs in the President's budget.

Within those functional categories, moreover, the revised S 1541 would require that funds be further allocated between existing and proposed programs, permanent and annual appropriations and between controllable and uncontrollable programs. While the resolution itself would not allocate totals among committees and subcommittees, the budget committees in their reports for scorekeeping purposes would do so.

Under the Government Operations bill, Congress in its initial budget resolution could have required outlay limitations in appropriations and other bills that would set ceilings on amounts that could be spent for particular programs during the fiscal year. Arguing that appropriate ceilings were difficult to determine—and that a president could use such limits to justify impoundments—the Rules Committee dropped the provision.

Appropriations Process

As under the House bill, once enacted the budget resolution would guide but not bind Congress as it acted on separate appropriations measures providing budget authority for spending on federal programs. With an exception for Social Security and other self-financing programs, no measure appropriating funds or making tax changes could be considered before adoption of an initial budget resolution.

To clear the way for prompt action on appropriations bills, the revised S 1541 would set a May 15 deadline for legislative committees to report authorization bills to the floor. The Rules Committee revamped a Government Operations provision setting a May 31 deadline for enactment of authorization bills on the grounds that such a requirement was unworkable and would allow opponents to kill programs through delaying tactics. (The House bill set a March 31 deadline for passage of authorization bills.)

Unlike either the House bill or the Government Operations version, the revised S 1541 would allow each appropriations bill to be sent to the President to be signed into law as soon as it cleared Congress. The Rules Committee eliminated a provision in the original Senate version making all appropriations contingent on a "triggering" ceiling enforcement measure.

Under the Government Operations Committee bill, no funds provided by an appropriations bill could have been spent until triggered by the ceiling enforcement measure that would reconcile separate spending decisions to budget targets. The Rules Committee concluded, however, that the triggering requirement would make all appropriations bills hostage to a presidential veto of the enforcement bill.

As passed by the House, HR 7130 would allow appropriations bills to be sent to the President upon final passage only if they met target totals set by the budget resolution. All other appropriations bills would be held up until a reconciliation process was completed.

The Government Operations version set a Sept. 20 deadline for final action on appropriations. The Rules Committee moved the deadline up to August to require that Congress finish action on appropriations before its customary August recess. In non-election years, when Congress generally recessed for most of the month, appropriations would have to be cleared five days before the August recess. In election years, when Congress remained in session during August, appropriations would have to

(HR 7130 set an Aug. 1 deadline for final action on appropriations bills.)

Reconciliation

As revised by the Rules Committee, S 1541 would establish a budget reconciliation process essentially similar to that required by the House bill. It differed substantially, however, from the Government Operations version.

Under the Government Operations bill, Congress after finishing work on spending measures would have taken up the ceiling enforcement measure. If separate appropriations decisions had stayed within the initial budget resolution targets, the enforcement bill simply would trigger the appropriations measures.

If the budget targets had been exceeded, however, the original S 1541 would have required Congress to first attempt to cut appropriations to fit the targets. Only if that attempt failed would Congress reconsider its budget targets.

Concluding that the enforcement process thus would make spending cuts—rather than tax or deficit adjustments—the preferred approach to budget reconciliation, the Rules Committee revised the procedures to require a second budget resolution.

Under the revised bill, just before the August recess (or by Aug. 15) the budget committees would report a second budget resolution either affirming or revising the first budget resolution's targets. After returning from its recess (or just after Labor Day), Congress would finish action on the second resolution.

If Congress then concluded that its earlier spending and revenue decisions should be adjusted to fit its budget requirements, the second resolution could require enactment of a reconciliation bill cutting appropriations, adjusting revenues or the public debt or combining such actions. Any reconciliation bill would have to be cleared by Sept. 25.

The Rules Committee version specified that the reconciliation bill could rescind appropriations carried over from previous fiscal years as well as for the upcoming fiscal year. By thus gaining control over spending from unobligated funds already in the pipeline, the committee reasoned, Congress could better accomplish the outlay control objective that the Government Operations Committee had sought by providing for spending ceilings.

Backdoor Spending

With some modification, the Rules Committee retained the bill's provisions bringing new backdoor spending programs under the annual appropriations process. As drawn up by the Government Operations Committee, S 1541 would have made spending on most such programs subject to appropriation of the funds in regular appropriations measures reported by the Appropriations Committee.

Revising the original Senate bill, the Rules Committee applied the annual appropriations requirement to contract and loan authority programs but devised a looser procedure for Appropriations Committee consideration of spending for new entitlement programs in which the federal government would be obligated to pay benefits to all eligible recipients.

Under that procedure, legislation reported by an authorizing committee to create a new entitlement program would be referred to the Appropriations Committee

for 10 days. In reporting the measure back to the floor, the Appropriations Committee could recommend an amendment limiting the potential obligations that the government could incur through the new program.

While S 1541 required Appropriations Committee review of increases in existing backdoor programs, the revised bill would exempt trust funds, government corporations, gifts to the government, government-guaranteed and insured loans and general revenue sharing.

(The House bill, in addition to making outlays under new backdoor programs subject to appropriations committee review starting in 1975, would require annual appropriations for existing backdoor programs after Oct. 1, 1978.)

Program Review

The Rules Committee made substantial changes in provisions designed to require periodic review of the performance of existing federal programs. A provision limiting program authorizations to three years was dropped, and another requiring pilot testing of new program proposals was modified to make such testing only an option that could be used by authorizing committees considering the proposals.

Impoundment

In passing HR 7130, the House included the provisions of separate legislation giving Congress power to force the President to release impounded funds. No impoundment provision was included in S 1541, but the Rules Committee added language clarifying the Anti-Deficiency Act of 1950 to limit its use as justification for impoundment of funds.

As revised, S 1541 would delete language in existing law allowing the President to reserve funds from spending to take account of "other developments" as well as of possible savings, greater efficiencies or contingency needs. The bill also would forbid impoundments under the Anti-Deficiency Act for fiscal policy purposes. ✓

ABORTION HEARINGS

Hearings—Senate Judiciary Constitutional Amendments Subcommittee March 6-7 on proposed amendments to the constitution (S J Res 119 and S J Res 130) guaranteeing the "right to life" to the unborn.

More than a year after the Supreme Court decision striking down state restrictions on abortion during the first trimester of pregnancy, congressional hearings began on the sensitive issue.

Four of the nation's eight active Roman Catholic cardinals, other religious leaders, and members of Congress lead the list of 20 witnesses testifying at packed hearings on the moral, ethical and religious questions surrounding abortion.

The resolutions (S J Res 119 and S J Res 130) under consideration proposed constitutional amendments which would have the effect of negating the court's Jan. 22, 1973, decision. The court held that states could not interfere with the decision of a woman and her doctor to terminate a pregnancy by abortion during the first three months of pregnancy. (Supreme Court decision, 1973 Weekly Report p. 12)